



AN EVALUATIVE STUDY OF HINDUISM WITH REFERENCE TO HUMAN RIGHTS

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ABSTRACT

Ever since the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights, universality of internationally recognized human rights norms has been a subject of concern and debate, especially by those espousing cultural and regional relativism. During the preparatory meetings convened in various regions of the world as precursors to the 1993 World Conference on Human Rights in Vienna, governments at the Regional Meeting for Asia advocated the view that human rights should be seen in the context of religious and cultural settings along with national and religious settings. It should, however, be noted that the Vienna Declaration and Program of Action adopted at the Vienna Conference reiterated the universality and indivisibility of human rights.

KEYWORDS: Hinduism, Human Rights, Universal Declaration of Human Rights, Dharma

INTRODUCTION

Thus, the subject under discussion, human rights concepts as viewed from the perspectives of various religions, such as Hinduism and Islam, is of utmost importance. As a preface to the discussion of my topic, however, it seems essential to provide the proper context by briefly describing Hinduism and its pertinent major tenets.

Hinduism and Its Pertinent Tenets

As the oldest living religion, Hinduism, the religion of Indo-Aryans, is called "Sanatana" dharma, or eternal religion, based on eternal truths. It is also called Manva dharma, the religion of man, which was meant for all mankind.

Dharma, which is hard to define, has been appropriately described as "one of those Sanskrit words that defy all attempts at an exact rendering in English or any other [language]." Professor Kane considers the conception of dharma "a far-reaching one [which] embraced the whole life of man." He continues: "The writers on Dharmasastra meant by Dharma not a creed or religion but a mode of life or a code of conduct, which regulated a man's work and activities as a member of society and as an individual and was intended to bring about the gradual development of man and to enable him to reach what was deemed to be the goal of human existence." Dharma is that which sustains; it is "the way in which the cosmos or the balance in the cosmos is maintained."

A modern jurist, M. Rama Jois, has recently described dharma as that which "sustains and ensures progress and welfare of all in this world and eternal bliss in the other world. The Dharma is promulgated in the form of commands,¹ "He continues: "Therefore, Dharma embraces every type of righteous conduct covering every aspect of life essential for the sustenance and welfare of the individual and society and includes those rules which guide and enable those who believe in God and heaven to attain moksha (eternal bliss). The Manusmriti describes the necessity of scrupulous practice of dharma in the following words: "Dharma protects those who protect it. Those who destroy Dharma get destroyed. Therefore, Dharma should not be destroyed so that we may not be destroyed as a consequence

thereof.² Rama Jois explains:

The principle laid down in this saying is of utmost importance and significance. In the above shortest saying, the entire concept of Rule of Law is incorporated. The meaning it conveys is that an orderly society would be in existence if everyone acts according to Dharma and thereby protects Dharma, and such an orderly society which would be an incarnation of Dharma, in turn, protects the rights of individuals. Rules of Dharma were meant to regulate the individual conduct, in such a way as to restrict the rights, liberty, interest and desires of an individual as regards all matters to the extent necessary in the interest of other individuals, i.e., the society, and at the same time making it obligatory for the society to safeguard and protect the individual in all respects through its social and political institutions. Shortly put, Dharma regulated the mutual obligations of the individual and the society. Therefore it was stressed that protection of Dharma was in the interest of both the individual and the society. Manu warns, "Do not destroy Dharma, so that you may not be destroyed." A "State of Dharma" was required to be always maintained for peaceful coexistence and prosperity."

Roughly 5,000 years old, Hinduism boasts the most ancient book, the Rigveda, universal principles, and a following of 700 million people. Hinduism has endured while the ancient faiths of Babylon, Egypt, Greece and Rome have survived only in history books. Its strength lies in its unique ability to adapt itself to changing circumstances by reinterpreting early scriptural texts, while always retaining its core.

An important axiom of Hinduism is that God is omnipresent and immanent in all that exists in the universe.³ Thus, according to Hinduism, this universal spirit or soul (Brahman) manifests itself in all human beings and indeed pervades all creation, as the very first verse of the Isa Upanishad declares: "God covers all that moves in the Universe."⁴

What follows from this fundamental belief in the omnipotent presence of the Supreme Being is pertinent for our discussion of international human rights. As a first corollary Hinduism firmly believes in universal brotherhood. Since God permeates every being, there is unity and equality in diversity, which

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A Seer is he
Who sees the immutable
In the body of all mortals ;
And, realising
That the same Being
Equally exists everywhere,
He attains salvation
As he does not slay others
Bringing death to his own Self.
Similarly, Isa Upanishad describes it thus:
He moves and is yet Immobile.
He is at once far off and near.
He is within all and also
On the face of all that exist.
Seeing this Supreme Being
As the beginning and end of
All beings and pervading all,
One can have hatred towards none.

Hindu teachings reiterate the human goal of the realization of the Divine in everything, which unity of all faiths. This means not only freedom from any hatred or malice to other human beings, but also an affirmative duty and obligation to serve God's creation if one is to reach the highest level of spiritual attainment in being identified with the Divinity.⁵ The well-known Hindu saying, "All humanity is one family," aptly captures this sentiment.

The second corollary is in Hinduism's belief in oneness of all religions and hence its advocacy of universal tolerance, indeed total acceptance of and rejoicing in differences. Bhagvadgeeta states it eloquently:

Whoever approaches me
In whatever manner,
I accept him.
All paths men are struggling through
Lead unto Me.
What better expression of human rights, human dignity and catholicity than the following verse in the Geeta:
Impartial and equal am I to all beings.
None do I despise nor love more than any other.

That India put this belief in practice is demonstrated by its willingness and ability to welcome and give solace to people of other faiths and religions from abroad, many of whom were facing persecution. These include Judaism, Zoroastrianism, Christianity, and Islam, and others that were indigenous to India, such as Buddhism, Jainism, and Sikhism. More recently, it has given refuge to a large number of Tibetans who, with the Dalai Lama, fled their native country after the Chinese moved into it.

Internationally Protected Human Rights In The Context Of Hinduism's Basic Tenets

In the light of the tenets of Hinduism noted above, it would be a fair assessment that Hinduism would not find fault with the international bill of human rights - the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and its Optional Protocol, and the International Covenant on Economic, Social⁶ and Cultural Rights.⁷ However,

critics are likely to point to some features of Hinduism which seem to be at odds with the modern concept of human rights. One such feature is the caste system. As Professor Barnett R. Rubin has recently observed, "the tenets of Hinduism as interpreted by the priestly stratum, the Brahmins, sanctify inequality as institutionalized in caste."

The second feature which, following from the caste system, appears at odds with human rights concepts is untouchability, which in Professor Rubin's words is "[p]robably the biggest obstacle to human rights which while outlawed, is still widely practiced and relegates a whole section of the community to 'unclean' status." The third such feature relates to the status of women who critics consider belong first to their fathers and then to their husbands, as in other pre-modern societies." These issues will be specifically addressed next, followed by a discussion of slavery and the place of humanitarian law in ancient India.

• Caste System

Voluminous literature exists on the origin and development of the caste (varna) system in India. After carefully studying the ancient scriptures, Professor Kane concludes that in the earliest times about which literary record exists, there were only two varnas, the aryas and their opponents, the dasyus, or dasas, who were later subjugated and given a position subservient to the aryas. But later, "owing to cultural advance, division of labour arose and numerous arts and crafts developed and they were in the process of contributing to the complexity of the system by creating numerous sub-castes based upon occupations."

It is, however, worth noting that in earlier times castes were not hereditary, as is demonstrated by a verse in Rigveda, where a poet exclaims. "I am a reciter of hymns, my father is a physician, and my mother grinds corn with stones. In another verse in Rigveda, a poet asks god Indra, "O, Indra, fond of soma, would you make me the protector of people, or would you make me a king, would you make me a sage that has drunk of soma, would you impart to me endless wealth? This shows that the same man could be a sage or a nobleman or a king, depending upon his desire and activities. In another ancient scripture, the Brahmanas, Kshatriyas, Vaisyas and Sudras, the four castes, are said to have sprung from the mouth, arms, thighs and feet of the Supreme Lord." In the very next verse the sun and the moon are said to be born from the eye and the mind of the Lord. This shows that the composer of the hymn regarded the division of society into four classes to be as natural and God-ordained as the sun and the moon.

In later periods, no later than about 1000 B.C., several castes and sub-castes developed, based on crafts and professions and sub-professions." According to the Greek envoy to the Mauryan empire (around 400 B.C.). Megasthenes, the Indian society was divided into seven castes: (1) philosophers, (2) husbandmen, (3) neatherds and shepherds, (4) artisans, (5) military. (6) overseers, and (7) councilors and assessors." As a possible explanation, Professor Kane says that it simply reflected division of labor in a complex society where castes and subcastes developed in response to society's functional needs."

Thus it appears that in the Vedic period, equality of all human beings was reiterated with no one being superior or inferior, and all being considered as equal "like the spokes of a wheel of the chariot connecting its rim and the hub." In later times, however, society came to be divided into four varnas on functional bases: (1) Brahmanas, the class of persons in teaching and other learned professions; (2) Kshatriyas, those who were warriors and the ruling class; (3) Vaisyas, the class of persons undertaking trade,

commerce and agriculture; and (4) Sudras, the class of persons rendering all other essential services to the society, such as artisans. Justice Rama Jois explains:

Even so the superiority or inferiority of an individual by birth in any one of these classes appears to have not been in existence. For instance, Valmiki and Vyasa, the authors of the two great epics, the Ramayana and the Mahabharata, who are regarded as the greatest poets, writers and philosophers of the country and who are held in the highest esteem down to this day by all sections of the society, belonged to the fourth and the second varna, respectively. This is also the case as regards the heroes of these two great epics. Rama, belonging to the Kshatriya class, in view of his superb qualities as a man and as an ideal ruler, has won a place in the hearts of one and all for ever. So too Krishna, the greatest of diplomats and warriors, and a great teacher, being the propounder of the immortal Bhagavadgita. Both these are adored and worshipped by all sections of the society as incarnations of God Himself.

- **Untouchability**

The impact of foreign invasions on Hindu India and the ensuing complications for a society striving to keep its identity intact must be kept in perspective. With the onslaught of invasions starting in 327 B.C., India faced foreign armies, including the Greeks, Huns, Arabs, Turks, Afghans, Persians, Mongols, Portuguese, French and British; the country was under Muslim rule for nearly 600 years, from the 13th century onwards, until the British took power at the end of the 18th century. The practice of untouchability grew as those belonging to the fourth varna were denied many privileges, including Vedic and higher education. Justice Rama Jois explains:

At a still later point of time, in the long meandering course of our history, the society got divided into innumerable castes and sub-castes. The evil of discrimination as high and low among men, on the basis of birth, hereditary avocations and other considerations, raised its head and the pernicious practice of untouchability with all its degrading implications came into existence.

When India became independent in untouchability was abolished by the constitution.⁸

The constitution of India confers on everyone the right of equality before the law and equal opportunity, and prohibits discrimination on the basis of religion, caste, gender, etc.⁹ However, social reformers had been fighting against the evil of discrimination for quite some time. These include Sri Chaitnya and Sri Ramakrishna, and the best known of such reformers, Mahatma Gandhi (1869-1948), whose life's mission was the total abolition of untouchability.

- **The Status of Women**

In ancient India Hindu women and men had equal status. Professor Kane refers to specific hymns in Rigveda as composed by women, and cites Bhadranyaka Upanishad to show that women actively participated in philosophical discourses. Women studied along with male students, and women sages and teachers were not uncommon.

During the sutra period (800 B.C. to 400 B.C.) women routinely recited Vedic mantras. But later the position of women became that of dependence on men. Women were not considered fit to study the Vedas and rituals for girls were performed without the recitation of Vedic mantras. However, family rituals required their equal participation with men.

While criticizing pre-modern Indian society, like other pre-modern societies, as discriminating against women, even Professor Rubin acknowledges that "women have a somewhat higher status in Hinduism than in some cultures, as their participation is required in some rituals (not only 'women's rituals') and some variants place great importance on shakti, or female power, as incarnated in goddesses such as Kali and Durga." Professor Kane cites several instances where women ruled in various parts of ancient India."

- **Slavery**

It is possible that the opponents of aryas, the dasas, when conquered were treated as slaves, although the Rigveda does not refer to them as slaves. However, in a later period, there are several references to the humane treatment of slaves, which indicates that at some time this practice developed. The Manusmriti places a slave "on the same level as one's son in the matter of corporal punishment. Thus 'the wife, the son, the slave, a menial servant these when guilty of wrong may be beaten with a rope or a thin piece of split bamboo, but only on the back and never on the head, and if a beat them otherwise he would be punished as a thief.'¹⁰

Slavery must not have been much in evidence in the 4th century B.C. when a foreign visitor like Megasthenes from Greece, who was accustomed to the treatment of slaves in his country, visited India, for he thought that there was no slavery. Justice Rama Jois explains: On the whole, it can be said that though providing scope for slavery was unfortunate, the provisions declaring forcible slavery illegal, prohibiting the masters from subjecting the slaves to cruelty and getting dirty jobs done by them and specifically enjoining that they be treated kindly, were some of the humane aspects of this pernicious practice.

As regards right to property and right to enter into contract, the position of a slave under the ancient Hindu law comparable to dependents in a joint family, like sons and wives, in that he could not enter into a contract which would be binding on the master. Even here there were exceptions. A contract entered into by a slave for family necessity, when the master was away, was binding on the master.

- **Humanitarian Law**

Wars were not uncommon in ancient India. However, they were to be undertaken as a last resort, for according to Manu, "kings should aspire for more glorious victories than those of war; victories by battles were not spoken of highly by the wise." Similarly, Arthashastra declared that "even when the advantages of peace and war are equal one should prefer peace for war causes loss of power and wealth and is troublesome and sinful." As one commentator observes: "Generally speaking, kings in ancient India did not engage in war unless they were forced to it; military expeditions were begun, not on sudden provocation or on small causes but only after great deliberation and on weighty issues. So at least declare the works on Polity - Arthasastras and Dharmasastras alike."

Declaration of war preceded the outbreak of hostilities. Such declarations were generally made through the dutas (envoys) in the form of the delivery of sasanas (royal writs) of an ultimatum. As Kautilya explains: "[w]rits are of great importance, in as much as treaties and ultimata depend on writs."

Wars in ancient India were to be fought according to Dharma Yuddha, the rules of righteousness in war. As Manusmriti declares, warfare is to be conducted in a fair way and by open

means." The military organization of the time is described in Kautilya." Specifically, according to Megasthenese, the military department of the Mauryan administration was composed of a board of 30, divided into six committees: (1) admiralty, (2) army service, transport and commissariat, (3) infantry, (4) cavalry, (5) warchariots, and (6) elephants."

Manusmriti reflects the customary practice of refraining from the use of weapons which caused unnecessary pain or more suffering than was indispensable to overcome the enemy. Certain methods of destruction were forbidden. Manu recalls that when "a king fights with his foes in battle, let him not strike with instruments concealed, with barbed or poisoned weapons the points of which are blazing with fire." He further says that "an Aryan who is in a chariot should never strike an enemy who is on foot, nor should an Aryan strike a suppliant, one who surrenders at discretion, non-combatants or one who is already fighting with another adversary."

Limits on permissible use of force logically extended to a ban on "ruthless destruction and sweeping devastation as is clear from the accounts of Greek travelers as well as from indigenous works of literature. Machines which caused wholesale destruction were of the asura variety and were certainly not recommended for use by men in war." Arthashastra lays down detailed rules regarding the time and region of fighting, the functions of the various divisions of the army, and the methods and uses of different kinds of battle arrays."

A distinction between combatants and non-combatants was customary for the protection of the latter. According to Megasthenes: Whereas among other nations, it is usual in contests of war, to ravage the soil, and then to reduce it to an uncultivated waste, among the Indians on the other hand by whom husbandmen are regarded as a class that is sacred and inviolable, the tillers of the soil even when battle is raging in their neighborhood are undisturbed by any sense of danger. for the combatants, on either side in waging the conflict make carnage of each other, but allow those engaged in husbandry to remain quite unmolested. Besides they neither ravage an enemy's land with fire nor cut down trees."

Even among combatants, various gradations were made to provide protection. Thus, under certain conditions combatants were not be killed; these included warriors whose armour had fallen off, who had laid down their weapons, who were mortally wounded, whose wounds weakened them, or who were fighting with another warrior.

Similarly, according to Mahabharata, some non-combatants were not be killed. These included mere travelers, those "engaged in drinking and eating", those skilled in some special art, and those "admittedly following

peaceful walks of life" Prisoners of war, the sick and the wounded were to be treated humanely. Similarly, elaborate rules governed the use of enemy property, treatment of persons in conquered territory and the treatment of conquered property.

As for conquered territories, Manu urges alliances rather than annexation: "While acquiring gold and territory the king does not prosper as much as he would he had made faithful ally, who would become powerful in the future." According to him, the customs of the defeated people must be respected by the conqueror."

CONCLUSION

Although ancient Hindu law does not form the basis for the

modern law of India as reflected in the country's constitution, legislation and judicial decisions, over 80 percent of India's population professes Hinduism and hence the question of Hinduism and human rights remains of vital importance.

Today, people of India claim and enjoy full civil and political rights under the prevailing legal framework of rights in the Republic of India, which is federal, parliamentary democracy. The Constitution of India defines civil and political rights in its elaborate provisions on "Fundamental Rights", which enshrine the concept of equality under the law and protect rights in fashion similar to the Anglo-American system by granting the right to freedom of speech and expression, freedom of assembly, freedom to practice any profession or business and freedom to form associations or unions. The Constitution abolishes untouchability and provides for special treatment of socially and educationally backward classes of citizens and tribes.

The Constitution of India also encompasses socio-economic goals and objectives in its provisions on the "Directive Principles of State Policy", which obligate the state to promote justice, equality and welfare and which parallel the rights contained in the International Covenant on Economic, Social and Cultural Rights. Although these are not enforceable rights in courts, they oblige the state to comply with principles. Article 37 of the Indian Constitution reads: "Application of the principles contained in this part: The provisions contained in this Part [Part IV] shall not be enforced by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". Justice Rama Jois explains that

non-implementation or violation by the State of the provisions contained in Part IV could be questioned or challenged by any method other than legal action. Therefore, non-performance on the part of the government in implementing these directive principles, or any action on its part in contravention of them... [can] be the subject matter of public criticism, both in the legislature and outside, resulting in adverse public opinion against the government, although it could not be enforced through courts.¹¹

In the light of the sketch presented in the discussion in the first three parts of this essay, it is fair to conclude that Hinduism and the modern development of international human rights are not in conflict; instead, they reflect similar values and are aimed at promoting human dignity.

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11. Rama Jois, supra (note 10), p. 585.